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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

LACHAE D. WHITE,

Defendant and Appellant.

D046879

(Super. Ct. No. SCD162911)

APPEAL from a judgment of the Superior Court of San Diego County, Robert J. Trentacosta, Judge. Affirmed as modified.

In May 2005, while on probation for a possession of cocaine conviction, Lachae D. White was arrested for driving with a suspended license and possession of marijuana. After a probation revocation hearing regarding the arrest, the trial court revoked White's probation and then reinstated White on probation with additional conditions.

In this appeal, White challenges the additional probation conditions which prohibit him from, among other things, associating with known gang members, displaying gang

paraphernalia, possessing or associating with persons possessing any weapons, and require him to obey any curfew imposed by his probation officer. White contends that these conditions are not reasonably related to the crime for which he is on probation or his potential future criminality, and are also unconstitutionally vague and overbroad. As discussed below, we are in partial agreement with White, and therefore strike the weapons and curfew conditions and modify the remaining gang conditions on constitutional grounds. We affirm the judgment as modified.

FACTS

In October 2001, White pled guilty to possession of cocaine base (Health & Saf. Code, § 11350, subd. (a)) and was placed on probation. Between October 2001 and September 2003, White's probation was revoked numerous times based on White's failure to adhere to the terms of probation and repeatedly testing positive for illegal drug use. After each revocation, White's probation was reinstated.

White's most recent probation violation occurred on May 27, 2005. White was driving alone in his brother's SUV at approximately 6:00 p.m. when San Diego Police Officer Joseph Krawczyk pulled him over for having a badly cracked windshield. From his initial conversation with White, Krawczyk determined that White's license was suspended and that he was on probation. The police then searched White pursuant to the search condition of his probation, and found 2.2 grams of marijuana in his pocket. The police also found clothing in the back of the SUV and, underneath the clothing, a box of firearm ammunition.

Based on the incident, which was the subject of a probation revocation evidentiary hearing on July 12, 2005, the trial court revoked White's probation and reinstated him on probation, with the additional requirements that he serve 365 days in jail and abide by supplemental probation conditions recommended by White's probation officer.¹ White was required to:

- (1) Not associate with any known gang members or persons associated with any gang (family members excepted);
- (2) Not associate with any persons who have firearms or weapons in their possession and not use or possess any weapon;
- (3) Not wear, display, use, or possess any insignias, emblem, badges, buttons, caps, hats, jackets, shoes, or any other clothing that evidences affiliation with any Blood gang set;
- (4) Not display any gang signs or gestures; and
- (5) Comply with any curfew condition required by his probation officer.

DISCUSSION

White challenges each of the additional conditions imposed on him by the trial court on both statutory and constitutional grounds. We review his contentions below.

¹ White was already required to comply with numerous probation conditions as part of the earlier grants of probation, including that he submit to a search at any time; not possess any firearms, ammunition or deadly weapons; and obey all laws. These other conditions of probation are not at issue.

I

White Has Sufficiently Preserved His Claims for Review

As an initial matter, we evaluate the Attorney General's contention that White has forfeited most of the claims he raises on appeal by failing to raise them in the trial court.

A

White Preserved His Statutory Objection to the Curfew and Weapons Conditions

The Attorney General contends that White's objection in the trial court to the "gang conditions" imposed did not constitute an objection to the curfew and weapons conditions and, therefore, White is barred from contesting those conditions on appeal. We disagree.

All of the additional conditions imposed on White at the July 2005 revocation hearing were included in the probation officer's written recommendation submitted to the parties and the trial court prior to the hearing. This document listed the curfew and weapons conditions, along with the more explicitly gang-related conditions, as recommended new "gang conditions."

In implementing the probation officer's recommendation, the trial court announced that it was imposing the "following additional gang conditions," subsequently listing the explicitly gang-related conditions along with the curfew and weapons conditions. White, through counsel, then objected to the imposition of "these gang conditions" because they were not supported by the facts of the case.

Taken in context, White's objection to "these gang conditions" is fairly interpreted as a statutory *Bushman/Lent*² objection to all the "gang conditions" imposed, including the curfew and weapons conditions. Therefore, White may reiterate his statutory *Bushman/Lent* challenge to those conditions on appeal.

B

We Exercise Our Discretion to Reach White's Constitutional Objections Even If They Have Been Forfeited

As White did not object to the probation conditions on *constitutional* grounds in the trial court, the Attorney General contends that he is precluded from arguing those grounds on appeal. For the reasons set out below we exercise our discretion to reach White's constitutional claims even if, as the Attorney General contends, White did not properly preserve them.³

It is well established that even when a party has forfeited a right to appellate review by failing to preserve a claim in the trial court, an appellate court may still review the claim as an exercise of its discretion. (*People v. Williams* (1998) 17 Cal.4th 148, 161, fn. 6; *People v. Johnson* (2004) 119 Cal.App.4th 976, 984 ["The fact that a party, by

² *In re Bushman* (1970) 1 Cal.3d 767, 777 (*Bushman*); *People v. Lent* (1975) 15 Cal.3d 481, 486 (*Lent*).

An objection that probation conditions are not reasonably related to the defendant's crime or future criminality under Penal Code section 1203.1 (hereafter, section 1203.1) is referred to as a *Bushman/Lent* objection, a reference to the two Supreme Court cases that set forth the proper standard of review for evaluating the trial court's ruling on such an objection.

³ Given our resolution of White's challenge to the curfew and weapons conditions, we need only reach White's constitutional objections to the gang-related conditions.

failing to raise an issue below, may forfeit the right to raise the issue on appeal does not mean that an *appellate court* is precluded from considering the issue'").) This is especially true in the criminal law context where forfeiture may lead to a subsequent filing of a petition for a writ of habeas corpus asserting ineffective assistance of counsel based on trial counsel's failure to preserve the issue. (*People v. Crittenden* (1994) 9 Cal.4th 83, 146.)

An exercise of our discretion to review White's constitutional claims is particularly appropriate here because: the constitutional challenge to the probation conditions involves "pure questions of law that can be resolved without reference to the particular sentencing record developed in the trial court" (*People v. Welch* (1993) 5 Cal.4th 228, 235); the law at the time of the probation hearing was, at the very least, unsettled as to whether an objection was required to preserve a constitutional objection to a probation condition (*People v. Scott* (1994) 9 Cal.4th 331, 357);⁴ and White did object on other grounds to the probation conditions, thus giving "the court an opportunity to modify or

⁴ As we conclude that review of White's constitutional claims is a proper exercise of our discretion, we need not determine whether a constitutional objection to probation conditions is forfeited by failure to raise the objection in the trial court. (*In re Justin S.* (2001) 93 Cal.App.4th 811, 815 [constitutional objections to probation conditions are not forfeited]; *In re Josue S.* (1999) 72 Cal.App.4th 168, 171 [constitutional objections are forfeited]; *People v. Gardineer* (2000) 79 Cal.App.4th 148, 152 [same]; cf. *People v. Welch* (1993) 5 Cal.4th 228, 237 [*Bushman/Lent* objections to probation conditions are forfeited if not raised in the trial court].) The question of whether a constitutional objection to a probation condition can be raised for the first time on appeal is currently pending before the California Supreme Court. (See *In re Sheena K.* (2004) 116 Cal.App.4th 436, review granted June 9, 2004, No. S123980.)

delete the condition [White] claimed was invalid." (*People v. Jungers* (2005) 127 Cal.App.4th 698, 703.)

II

The Gang Conditions Are Reasonable, but Must Be Modified on Constitutional Grounds; The Curfew and Weapons Conditions Are Not Permitted on Statutory Grounds

A

Applicable Legal Principles

Section 1203.1 grants trial courts broad discretion to impose "reasonable" conditions of probation to foster rehabilitation of the defendant and ensure that justice is done. (§ 1203.1, subd. (j) ["The court may impose . . . reasonable conditions [of probation] . . . to the end that justice may be done, that amends may be made to society for the breach of the law . . . and generally and specifically for the reformation and rehabilitation of the probationer"]; *People v. Dominguez* (1967) 256 Cal.App.2d 623, 627 ["Section 1203.1 . . . sets the limits of the trial court's discretion in imposing conditions of probation"].)

The trial court's discretion, although broad, nevertheless is "not without limits: a condition of probation must serve a purpose specified in the statute." (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121 (*Carbajal*).) Accordingly, our Supreme Court has "interpreted . . . section 1203.1 to require that probation conditions which regulate conduct 'not itself criminal' be 'reasonably related to the crime of which the defendant was convicted or to future criminality.'" (*Ibid.*, quoting *Lent, supra*, 15 Cal.3d at p. 486.) "There is no exact formula for the determination of reasonableness. Each case must be

decided on its own facts and circumstances" (*In re White* (1979) 97 Cal.App.3d 141, 148.)

In addition to the statutory requirement of reasonableness noted above, a probation condition that limits constitutional rights will be deemed "constitutionally overbroad when it substantially limits a person's rights and those limitations are not closely tailored to the purpose of the condition." (*People v. Harrison* (2005) 134 Cal.App.4th 637, 641 ["A state may restrict a constitutional right, but only when the restriction is narrowly drawn to serve a compelling state interest"]; *People v. Bauer* (1989) 211 Cal.App.3d 937, 940-941.) To survive constitutional scrutiny a probation condition must also "'be sufficiently precise for the probationer to know what is required of him" (*People v. Lopez* (1998) 66 Cal.App.4th 615, 630 (*Lopez*).)

B

The Gang Conditions Are Reasonably Related to Rehabilitation of the Probationer and Are Therefore Proper Under Section 1203.1

White contends that the explicitly gang-related probation conditions — that he: (1) "not associate with any known gang member or persons who are associated with any gang"; and (2) "not wear, display, use or possess any gang insignias, emblems, badges, buttons, caps, hats, jackets, shoes, or any other clothing which evidences affiliation with any Blood gang set" or "display any gang signs or gestures" — must be stricken because they are not related to any rehabilitative purpose under section 1203.1, and are thus not "'reasonably related to the crime of which [he] was convicted or to future criminality.'"

(*Carbajal, supra*, 10 Cal.4th at p. 1121.) In light of the broad discretion given to the trial court in fashioning conditions of probation under section 1203.1, we disagree.

While the record does not support a finding that White is a gang member⁵ or has engaged in gang-related criminal activity, a gang-related probation condition may properly be imposed based on evidence that a probationer is in danger of falling under the sway of a criminal street gang. (*In re Laylah K.* (1991) 229 Cal.App.3d 1496, 1501-1502 (*Laylah K.*), disapproved on other grounds in *In re Sade C.* (1996) 13 Cal.4th 952, 962, fn. 2, 983, fn. 13.) While such conditions are ideally suited for juvenile probationers, "probationary proscriptions against gang-related conduct are equally proper when imposed upon adult offenders." (*Lopez, supra*, 66 Cal.App.4th at p. 625.) This is because "[t]he path from gang associations to criminal gang activity is open to adults as well as to minors," and the rehabilitative purpose of a condition prohibiting involvement with gang members is "the same with respect to an adult . . . as it is with respect to a minor." (*Ibid.*, citing *Laylah K.*)⁶

⁵ White's mother, Seretha Yvonne Peppers, testified at the hearing on White's behalf. She testified that unlike his older brothers, White "has never been a gang member," and poignantly stated that, as she told anyone who asked, "if you want to put him in a gang, he's in my gang — the Peppers gang."

⁶ While the *Lopez* court recognized in relying on *Laylah K.* that "courts have sometimes sustained probation conditions imposed upon a juvenile offender that would be 'unconstitutional or otherwise improper' if imposed upon an adult offender," it emphasized that the basis for this distinction — "that a juvenile probationary order is a part of a final order, which the minor may not reject, aimed at ensuring the minor's reformation and rehabilitation, while an adult probationary order, which the defendant may reject, is an act of leniency in lieu of the prescribed statutory punishment" — was "not of material effect." (*Lopez, supra*, 66 Cal.App.4th at p. 625.) Rather, "[t]he

In the instant case, the record supported the trial court's implicit determination that the 26-year-old White was in danger of falling into the orbit of a criminal street gang, "5/9 Brim," which could interfere with the rehabilitative purposes of his probation and expose him to participation in future criminal acts.

At White's probation revocation hearing, Officer Krawczyk, a member of the gang suppression unit, testified that 5/9 Brim is a "set" of the Blood street gang. Krawczyk testified that within the month of May alone, San Diego police had reported two occasions where White was loitering with 5/9 Brim members.⁷ While White testified that he was not a member of the 5/9 Brim street gang, he acknowledged that his three older brothers had been members, and that he knew "almost . . . everybody" in 5/9 Brim.

When White was arrested in May 2005, the vehicle he was driving was found to contain some red clothing and a belt with a large "B" buckle, which Krawczyk testified were consistent with clothing worn by members of the 5/9 Brim gang. The officer testified that when asked about the belt, White stated he bought it because it was "the only one they had in the store." At the probation revocation hearing, White conceded that the belt and clothing found in the SUV were his, and offered no non-gang explanation for

rehabilitative point of [the gang association probation condition] is the same with respect to an adult such as [the probationer] as it is with respect to a minor such as the juvenile in *Laylah [K.]*" (*Ibid.*)

⁷ Krawczyk testified that around the "early part of May" he did a computer check for reported contacts involving White.

the "B" buckle, stating only "What am I supposed to do, wear my pants around my ankles?"

Thus, the evidence before the trial court at the revocation hearing supported a conclusion that rather than engaging in productive rehabilitative endeavors, White was loitering with 5/9 Brim gang members with whom he was well acquainted, both through his older brothers and because he knew "almost . . . everybody" in the gang.⁸ White was thus uniquely well positioned to join 5/9 Brim, and the trial court could reasonably fear that given White's continued criminal behavior, possession of 5/9 Brim-related clothing, and repeated failures on probation, there was a realistic possibility he could succumb to the temptation to do so.⁹ Consequently, in light of the trial court's broad discretion, a probation condition that White not associate with 5/9 Brim members in the future or engage in activities that would associate him with that gang was reasonably related to the

⁸ On cross-examination, White's mother testified that while White hangs out with 5/9 Brim gang members, he has not worked for the past two years, and during that time she had financially supported him despite the fact that she suffers from a number of health problems. Responding to this testimony in imposing the additional probation conditions, the trial court told White he was fortunate to be supported by his mother, and that it was time for him to "repay the favor." The court stated that once White was released from custody, "[y]ou need . . . to be working and to be helping that woman. You need to disassociate yourself, to the extent that you can, from the gang influence that is obviously not only within your own family but in the neighborhood."

⁹ The probation revocation hearing occurred in the context of White's repeated failures on probation — suggesting that the existing conditions of probation were not having the desired rehabilitative effect. For the past four years, White repeatedly tested positive for illegal drug use, and neglected to follow other terms of probation, and most recently was rearrested for driving with a suspended license and possession of marijuana.

rehabilitative purposes of section 1203.1 and potential "'future criminality.'" (*Carbajal, supra*, 10 Cal.4th at p. 1121.)

C

The Gang Conditions Must Be Modified to Pass Constitutional Scrutiny

White contends that even if the gang conditions are lawful under section 1203.1, they are invalid on constitutional grounds because they are impermissibly vague and overbroad.

First, White contends that his probation conditions are impermissibly vague because they do not define the term "gang." As other courts have recognized, "gang" is a term that has recently "acquired generally sinister implications," but also "has considerable benign connotations," and to survive constitutional scrutiny should be more specifically defined when utilized in a probation condition. (*Lopez, supra*, 66 Cal.App.4th at p. 631.) The Attorney General does not seriously challenge this principle.¹⁰

The record of the probation revocation hearing demonstrates that the trial court was specifically concerned that White would become entangled with the same street gang

¹⁰ The Attorney General does not dispute that a prohibition on associating with a "gang" is constitutionally overbroad, but argues that modification is unnecessary here because "[i]t is clear that the word 'gang,' in this context, relates to criminal street gangs or the 'Blood' set." The Attorney General attempts to distinguish *Lopez*, by stating that the court modified the term "gang" there "in an apparent abundance of caution." In fact, as the *Lopez* opinion makes explicit, the court modified the condition not out of caution, but because without modification the condition was unconstitutionally vague. (*Lopez, supra*, 66 Cal.App.4th at pp. 631-632.)

that ensnared his older brothers, and in which he knew almost everybody — the 5/9 Brim set of the Blood criminal street gang.¹¹ Thus, we will modify the explicitly gang-related probation conditions by making explicit what is implicit in the trial court's probation conditions — that White is not to associate with 5/9 *Brim* gang members or associates.

Second, White contends that the gang-related probation conditions are overbroad because they do not include a knowledge requirement, i.e., a requirement that White *knowingly* associate with 5/9 Brim members or wear 5/9 Brim-related paraphernalia for a violation to occur. This concern was also recognized as valid in analogous circumstances in *Lopez*, and we again find *Lopez*'s reasoning persuasive. (*Lopez, supra*, 66 Cal.App.4th at p. 625.) Therefore, we will modify White's probation conditions, as was done in *Lopez*, solely to prohibit White's *knowing* association with 5/9 Brim members and use or possession of gang insignia that he *knows* to be associated with 5/9 Brim.¹²

¹¹ The only gang discussed at the hearing was 5/9 Brim, and the court informed White prior to imposing the conditions: "You need to disassociate yourself, to the extent that you can, from the gang influence that is obviously not only within your own family but in the neighborhood" — a reference that, in view of the record, could only have been to the 5/9 Brim gang.

¹² Again, the Attorney General does not contend that the probation condition is constitutionally sufficient without such a knowledge requirement, but simply argues that such a requirement can be "inferred" in the condition as currently stated because the condition with respect to gang members prohibits association with "known gang members." As "known" gang members itself is vague and could be interpreted to mean any gang member *known to the authorities*, but not to White, modification is necessary.

D

*The Curfew and Weapons Conditions Are Not Reasonably Related to
White's Crime or Future Criminality*

The trial court also required as conditions of probation that White "not . . . use or possess any weapon" or "associate with any persons who have firearms or weapons in their possession"; and that he "comply with any curfew, if so directed by his probation officer." White contends that these conditions are not reasonably related to White's offense or future criminality, and are additionally unconstitutionally overbroad. We agree with White that these conditions bear no reasonable relationship to his crimes (possession of cocaine, driving with a suspended license and possession of marijuana) or future criminality and are thus not permitted under section 1203.1.

There is no factual nexus and thus no reasonable relationship between White's crime or future criminality and the curfew condition. The record contains no evidence that White engaged in or is likely to engage in any criminal activity at a time that might be covered by a reasonable curfew: the record is silent as to the time of White's original possession of cocaine offense and White's revocation offense occurred between 6:00 and 6:30 p.m. "The trial court's discretion, although broad, nevertheless is not without limits," and here, the trial court exceeded those limits by imposing a curfew condition that is not "'reasonably related to the crime of which the defendant was convicted or to

future criminality.'" (*Carbajal, supra*, 10 Cal.4th at p. 1121.) Consequently, the condition must be stricken.¹³

Similarly, there is also little or no factual connection between White's crime or future criminality and the weapons condition. The court expressly found "reasonable doubt" as to whether White was aware of the ammunition in the back of his brother's SUV, and did not revoke his probation on that ground,¹⁴ instead basing the revocation on White's driving with a suspended license, possession of marijuana, and failure to report to his probation officer as directed. While we recognize that "reasonable doubt" is not the standard for probation revocation (*People v. Rodriguez* (1990) 51 Cal.3d 437, 447), we believe the clear implication of the court's finding was that it would not consider the ammunition found in the SUV in revoking or modifying the terms of White's probation. It would be a usurpation of the trial court's fact-finding authority to, as the Attorney

¹³ *Laylah K., supra*, 229 Cal.App.3d at page 1502, cited by the Attorney General in support of the curfew condition, is easily distinguished. *Laylah K.* involved a minor, and the reviewing court based its conclusion that the curfew imposed was lawful on the fact that with respect to minors, ". . . Welfare and Institutions Code section 729.2 requires the court to impose a nighttime curfew, unless it makes specific findings that such a condition would be inappropriate." Here, White is not a minor and section 729.2 does not apply.

We also are not persuaded by the Attorney General's conclusory contention without any argument or citation in support that White's challenge to the curfew condition is premature because no condition has yet been imposed by White's probation officer. (See *People v. Williams* (1997) 16 Cal.4th 153, 215 [contentions "'perfunctorily asserted without argument in support'" are not properly before appellate court].)

¹⁴ At the time of his arrest, White's existing probation conditions prohibited his possession of ammunition.

General urges, affirm the weapons condition on appeal based on a factual nexus between White and the ammunition that the trial court expressly found lacking.¹⁵

Apart from the ammunition found in the SUV, there is no indication in the record linking White's offenses or potential future criminality to the use of weapons or to his association with armed persons. White's original offense was possession of cocaine, and his probation violations consisted of testing positive for illegal drugs, driving with a suspended license, and possessing marijuana. Despite four years of probation supervision, there is no indication in the record that White has ever been violent, or used weapons in an unlawful manner. Courts have been unwilling to uphold weapons conditions in such cases, and we are unwilling to do so here. (*In re Martinez* (1978) 86 Cal.App.3d 577, 579, 583 (*Martinez*) [striking probation condition that defendant who had been convicted of battery on a police officer not possess any "dangerous or deadly weapon" because even though the crime involved violence, there was "nothing in the defendant's past history or in the circumstances of the offense [to] indicate a propensity on the part of the defendant to resort to the use of . . . weapons in the future"]; cf. *People v. Burton* (1981) 117 Cal.App.3d 382, 390 [probation condition that defendant refrain from consuming alcohol not reasonable because "record is completely devoid of any

¹⁵ Even if the trial court had found that White possessed the ammunition, that finding would logically support a prohibition as to the possession of firearms, a prohibition that is unnecessary because, as White notes, having pled guilty to felony possession of a controlled substance, he is legally prohibited from possessing firearms (Pen. Code, § 12021, subd. (a)(1)), and the terms of White's earlier probation already prohibit him from possessing firearms, ammunition or deadly weapons.

evidence that [defendant] had consumed alcoholic beverage prior to, during, or after the assault for which he was convicted," and "the record fails to establish the requisite factual nexus between the crime, [defendant's] manifested propensities and the probation condition"].¹⁶

The two cases cited by the Attorney General to support the weapons condition are distinguishable. In both cases, juvenile offenders committed crimes of violence, and the record contained specific facts that supported the imposition of a weapons prohibition to prevent future criminality. In *In re Jimi A.* (1989) 209 Cal.App.3d 482, 487-488 (*Jimi A.*), the reviewing court upheld a weapons condition imposed on a juvenile who had violently attacked a school principal because "the impulsive nature of the attack clearly suggests the minor lacks self-control," and therefore it was "appropriate for the court to limit defendant's possession of weapons out of caution for public safety." (*Ibid.*) In *In re Frankie J.* (1988) 198 Cal.App.3d 1149 (*Frankie J.*), the court upheld a prohibition on weapons possession for a defendant who had committed a rape, because "[a]lthough no weapon was seen by or used upon the victim, there [wa]s substantial evidence the use of a weapon was contemplated," and would have occurred but for "the fortuitous escape of

¹⁶ The court in *Martinez* recognized that "it could be argued that imposing such a condition on anyone who suffers a criminal conviction for any offense would go a long way in preventing future crimes," but deemed that given the statutory and constitutional limitations, a probation condition cannot be imposed simply based on the "speculati[on]" that such a condition might prevent future crime. (*Martinez, supra*, 86 Cal.App.3d at pp. 581-582.)

the victim." (*Id.* at pp. 1153, 1154.)¹⁷ In the instant case, there is no evidence of violence, no evidence that White used any weapons in committing any offense, and, as White is an adult not a juvenile, the trial court's discretion in imposing probation conditions is narrower than in the cited cases.¹⁸

DISPOSITION

The judgment is modified by striking the following conditions of probation imposed by the trial court at the July 12, 2005 revocation hearing: Defendant may not associate with any persons who have firearms or weapons in their possession and not use or possess any weapon; and must comply with any curfew, if so directed by his probation officer.

In addition, the balance of the additional "gang conditions" imposed at the July 12, 2005 hearing are modified to read as follows:

¹⁷ The *Frankie J.* court also noted, in dicta, that "[t]here is an additional factor which would also justify the weapons restriction. Gang activities and weapon possession go hand-in-hand." (*Frankie J.*, *supra*, 198 Cal.App.3d at p. 1154, fn. 4.) The court did not suggest, however, that any time a gang condition was imposed, a concomitant weapons condition was proper. Rather the *Frankie J.* court noted that a weapons condition was proper based on the offender's gang involvement because the record revealed that in addition to the crime committed, he had also unlawfully possessed a handgun "as a direct result of his participation in gang activities." (*Id.* at pp. 1153-1154 & fn. 4.)

¹⁸ In fact, the Attorney General primarily relies on juvenile cases to support each of the probation conditions at issue in this appeal. While such case law is informative, it is generally distinguishable. "'Because of its rehabilitative function,'" a juvenile court enjoys greater leeway than other courts in imposing probation conditions. Therefore, "'[a] condition of probation which is impermissible for an adult criminal defendant is not necessarily unreasonable for a juvenile receiving guidance and supervision from the juvenile court.'" (*Jimi A.*, *supra*, 209 Cal.App.3d at pp. 487-488.)

Defendant may not associate with anyone known to him to be a 5/9 Brim gang member or person associated with the 5/9 Brim gang, with the exception of his family members; may not knowingly wear, display, use or possess any 5/9 Brim gang insignias, emblems, badges, buttons, caps, hats, jackets, shoes, or any other clothing, which evidences affiliation with 5/9 Brim; and may not knowingly display any 5/9 Brim signs or gestures.

Except to the extent of this modification to the conditions of probation imposed upon appellant at the July 12, 2005 revocation hearing, the judgment is affirmed.

IRION, J.

WE CONCUR:

McINTYRE, Acting P. J.

O'ROURKE, J.